From: Charles J. Lingo
To: Microsoft ATR
Date: 1/25/02 11:53am
Subject: Comment on DOJ vs. Microsoft

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Date: Jan. 25, 2002

To: Judge Colleen Kollar-Kotelly .
U. S. District Court.
Washington, D.C. 202

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RE: Comments about the proposed settlement between DOJ and Microsoft

Your Honor:

It is my opinion, and I hope yours as well, that the playing field in the computer software industry must be returned to level. The slope came into existence when Microsoft was allowed to keep the anti competitive licensing fees agreements for MS-DOS based upon number of CPUs sold rather than upon the number of installed operating systems. That license agreement placed the Microsoft license fee upon top of the license fee of any other operating system effectively impeding the sale of competing operating systems by forcing the payment of a second license fee in order to choose any other system.

I believe that now the only way to effectively level the playing field is to absolutely prohibit the installation of operating systems and application software by the computer manufacturer. The sale of the computer hardware and software including operating systems must be maintained separate until the sale to the end user. Neither the price of the computer nor that of the software may be reduced if they are purchased together. Simply prohibiting the "exclusive contracts" that Microsoft has used in the past will not level the field as the hardware will remain closed to others when it is shipped with software already installed. The lack of an "exclusive contract" will be meaningless. Hardware manufacturers may be allowed to offer an operating system with the hardware, provided that they offer at least three choices and that they comply fully with the price separation described above.

Microsoft, and other software companies must be prohibited from

supplying software that invades the hard drive and modifies existing software without first advising the installer of exactly what will be done. Modification of existing software without warning to and approval from the installing party MUST be treated as distribution of a virus. I mention this because I have personally had Microsoft software that I installed modify non-Microsoft software that was already installed on the computer onto which the Microsoft software was being installed. Windows 3.1 installation replaced both the memory manager and the disk cache in the Digital Research 6.0 operating system when it was installed. No warning that this action would be performed was given. No warning that this was about to be done was given. No approval was sought. Windows 95 OSR2 installation onto a hard drive, which already had Novell DOS 7.0 and IBM OS/2 Warp 3 installed and controlled by the IBM Boot Manager, invaded the Boot Manager and changed the settings to remove choice and allow only Windows 95 to be booted. Again, no warning was given nor approval sought. This invasion and modification without warning is the action of a virus. It should be treated as such. Any software which deliberately interferes with the operation of other software should be considered a virus. The obvious exception is anti virus software which is intended to prevent the virus from functioning. I realize that the scope of this trial most likely does not give to you the authority to define a computer virus. I believe that in the penalty assignment phase however, that you can specifically prohibit the virus like activity.

Please, in your decision in this case do four things.
1.) Prohibit the preloading or bundling of Microsoft software products with any hardware products prior to retail sale. The purchaser must perform the installation himself or pay separately to have the installation performed.
2.) Prohibit any modification of existing software without complete disclosure and acceptance by the installing party.
3.) Do not allow an exclusion of liability for merchantability, fitness for a particular purpose, or infringement, with respect to the product. The manufacturer, or supplier of any product must be held liable for the performance of the product in the manner in which it is intended to be used, and must be liable for any infringement upon the rights of others. It is unconscionable to hold the buyer liable for checking for copyright and patent infringement by the seller. This is especially true when the seller is a large corporation and the buyer is an individual person.
4.) Require that Microsoft "de-integrate" any "productivity item" from the operating system if any other software supplier offers substantially the same thing as a stand alone application. (Allow the item to be "bundled", that is, shipped

with but not "integrated", that is, part of the operating system. "Bundling" is fair competition. "Integration" is restraint of trade.

Sincerely yours,
Charles J. Lingo